MONTANA LEGISLATIVE HISTORY

Chapter 442 1993

Bill H 258 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 29	✓ C	Hearing Date(s)	Mar 15	✓ C
	Feb 03	✓ C		Mar 17	✓ C
		C			C
		C			C
Date Out	Feb 04	✓ C		Mar 17	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1/27	HEARING		
1/28	FISCAL NOTE PRINTED		
2/02	TABLED IN COMMITTEE		

HB 258 INTRODUCED BY TOOLE, ET AL.

EXCLUDE FROM INTERIM EARNINGS DEDUCTION IN SUCCESSFUL WRONGFUL DISCHARGE SUIT AN AMOUNT EQUAL TO REASONABLE COSTS OF OBTAINING OR RELOCATING TO NEW EMPLOYMENT

1/19	INTRODUCED		
1/20	REFERRED TO JUDICIARY		
1/20	FIRST READING		
1/29	HEARING		
2/05	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	62	35
2/10	3RD READING PASSED	69	28
	TRANSMITTED TO SENATE		
2/12	FIRST READING		
2/12	REFERRED TO JUDICIARY		
3/15	HEARING		
3/18	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/19	2ND READING CONCURRED	47	0
3/20	3RD READING CONCURRED	42	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	88	8
4/02	3RD READING AMENDMENTS CONCURRED	76	23
4/13	SIGNED BY SPEAKER		
4/14	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 442		
	EFFECTIVE DATE: 10/01/93		

HB 259 INTRODUCED BY SCHWINDEN, ET AL.

CLARIFY THAT EMPLOYEE INJURED WHILE PARTICIPATING IN RECREATIONAL ACTIVITY IS NOT ENTITLED TO WORKERS' COMPENSATION

1/19	INTRODUCED		
1/20	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/20	FIRST READING		
2/04	HEARING		
2/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED	98	2
2/16	3RD READING PASSED	97	3
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/04	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	48	0
3/12	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/16	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 154		
	EFFECTIVE DATE: 10/01/93		

HOUSE BILL NO. 258

INTRODUCED BY TOOLE, WHALEN, BIRD

IN THE HOUSE

JANUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 5, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 6, 1993	PRINTING REPORT.
FEBRUARY 8, 1993	SECOND READING, DO PASS.
FEBRUARY 9, 1993	ENGROSSING REPORT.
FEBRUARY 10, 1993	THIRD READING, PASSED. AYES, 69; NOES, 28.
FEBRUARY 11, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 12, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 18, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 19, 1993	SECOND READING, CONCURRED IN.
MARCH 20, 1993	THIRD READING, CONCURRED IN. AYES, 42; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 2, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 258

INTRODUCED BY Whalen Bird

A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM THE INTERIM EARNINGS DEDUCTION IN A SUCCESSFUL WRONGFUL DISCHARGE SUIT AN AMOUNT EQUAL TO THE COSTS OF OBTAINING OR RELOCATING TO NEW EMPLOYMENT; AND AMENDING SECTION 39-2-905, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-2-905, MCA, is amended to read:

"**39-2-905. Remedies.** (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest thereon. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, there must be deducted from the interim earnings any amounts expended by the employee in searching for, obtaining, or relocating to new employment.

(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of 39-2-904(1).

(3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2)."

-End-

LC 0911/01

HB 258
INTRODUCED BILL

Mr. Siroky said that if they should fail, under current statute, because they are high-hazard, people would be held to the higher liability standard if they built the structure after the ponds were built.

REP. BIRD asked **CHAIRMAN FAGG** who else is liable should there be a failure of the dam. **CHAIRMAN FAGG** said the engineers could be sued, or a third party complaint could be filed against the engineers.

REP. MCCULLOCH asked **CHAIRMAN FAGG** if there is a way to notify people who would like to move near a dam that may be impacted by this bill. **CHAIRMAN FAGG** said it's virtually impossible. It could be added to the land deeds, but that would be an overwhelming task.

REP. VOGEL asked **CHAIRMAN FAGG** on page 5, line 3, specifically, to define how far is "downstream." **CHAIR FAGG** said "downstream" is as far as the water goes that could cause a problem.

Closing by Sponsor:

CHAIRMAN FAGG closed by saying as long as more people move to Montana, we're going to have more people potentially moving below existing dams. Most dam owners do not provide insurance; it's very expensive. With a bill like this, there would be a better chance to buy insurance. Trial lawyers don't like this legislation because it adds a gross negligence standard to the Dam Safety Act. It is also true that downstream owners who have moved below a dam will have reduced property values, but that makes sense because they are moving to a potentially dangerous situation. Addressing **REP. BROWN'S** concern about the Berkeley Pit, there is no intention of adding the Berkeley Pit to this bill, and perhaps, an appropriate amendment can be drafted to exempt the Berkeley Pit.

HEARING ON HB 258

Opening Statement by Sponsor:

HOWARD TOOLE, HD 60, Missoula. A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM THE INTERIM EARNINGS DEDUCTION IN A SUCCESSFUL WRONGFUL DISCHARGE SUIT AN AMOUNT EQUAL TO THE COSTS OF OBTAINING OR RELOCATING TO NEW EMPLOYMENT; AND AMENDING SECTION 39-2-905, MCA."

HB 258 addresses the Wrongful Discharge Act. Section 1 in the bill is part of the Act, and it's the section of the Act that sets forth how much a person can collect in terms of damages in these types of cases. The entire section says that someone who has been lawfully terminated is limited to being awarded loss of wages for a period of four years on the date of discharge. What

this bill is attempting to do is to clarify exactly how much of the damages a person can get, and it addresses the amount expended by an employee for searching for employment.

Proponents' Testimony:

Gary Spaeth, Liability Coalition, stated the Wrongful Discharge Act was put together in 1987 and the work search which started out as two years is now four years. Termination is a very serious matter for an employee and because of that, the Coalition suggests that this bill be amended to allow and limit the deductions for the first year. The reason for doing this is to encourage the employee to go out and seek work in that first year of time.

David Owen, Montana Chamber of Commerce, declared Montana has a long history of wrongful discharge. The employers that **Mr. Owen** represents are hesitant to tamper with this section of the law, but consequently, it is a fair and reasonable bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. MCCULLOCH asked what happens if a person doesn't find a job within the first year, and if the possibility that the decision of wrongful discharge doesn't happen within that first year, is this going to exclude people from looking for work? **Mr. Spaeth** said not if they are suspended after the first year. The money will be extended to eighteen months. For the committee's information, **CHAIRMAN FAGG** told **REP. TOOLE** about the amendment and that it will be discussed during executive action. He asked **Mr. Spaeth**, Mr. Owen and **REP. TOOLE** to try to come to an agreement on the amendment.

Closing by Sponsor: None.

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 1-29-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow		✓	
Rep. Diana Wyatt	✓		

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB 258

DATE Jan. 29, 1993 SPONSOR(S) Toole

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Gary Spaeth	Liability Coalition	X	
David Owen	MT Chamber of Commerce	X	
Don Waldron	MT Rural Ed Assn.		—
Bruce W. Rivers	MSBA		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

was deferred for 24 hours.

EXECUTIVE ACTION ON HB 267

Motion: **REP. CLARK MOVED HB 267 DO PASS.**

Discussion:

CHAIRMAN FAGG stated he is opposed to the bill. If this bill is passed, he is concerned that there will be nothing left of the Federal Gun Free School Zone Act (GFSZ). There are already a lot of exemptions under that law. It covers private property on school grounds and covers individuals who are qualified under the law to receive their firearms license. **REP. CLARK'S** bill allows everyone who is not a felon to be licensed. While he appreciates what **REP. CLARK** is trying to do, he totally disagrees with the bill and believes it obliterates the Federal GFSZ Act.

REP. CLARK said this bill does not, in any way, shape or form, protect anyone who is taking a gun to school. People carrying guns for their own protection are breaking the firearms law. It does not give them a license to carry a gun. Most people in rural areas have guns in their vehicles because they live on ranches. This bill allows law-abiding citizens to legally carry guns on school grounds.

REP. VOGEL indicated he doesn't think the State can get federal firearms out of the GFSZ Act simply because federal law cannot be expanded. It can be restricted further, but it can't be expanded.

Motion/Vote: **REP. WINSLOW MOVED THAT HB 267 BE TABLED.** Motion carried 8-7. Those voting to table the bill were **CHAIRMAN FAGG, REPS. WINSLOW, BERGMAN, TASH, GRIMES, WYATT, BROOKE,** and **RUSSELL.** Those voting against the motion were **REPS. BIRD, CLARK, SMITH, SAYLES, WHALEN, VOGEL** and **BROWN. REPS. MCCULLOCH** and **TOOLE** did not vote.

EXECUTIVE ACTION ON HB 258

Motion: **REP. TOOLE MOVED HB 258 DO PASS.**

Discussion:

REP. TOOLE discussed the following amendment.

1. Title, line 6.
Following: "TO THE"
Insert: "REASONABLE"

2. Page 1, line 20.

Following: "any"
Insert: "reasonable"

REP. BIRD asked for a definition of "reasonable." **Mr. MacMaster** defined reasonable as a standard word often used in civil law, especially in tort law areas. The typical man or women is considered "reasonably prudent," and what they do within reason in a given fact situation is "reasonable." The term "reasonable" is seen throughout the code, especially in court law areas.

Motion/Vote: **REP. TOOLE** moved the amendment. The amendment carried 17-1 with **REP. WHALEN** voting no.

Motion: **CHAIRMAN FAGG** moved an amendment proposed by former **Rep. Gary Spaeth** on behalf of the **Montana Liability Coalition:** On page 1, at the end of line 21 add: "During the twenty-four months following the date of discharge." This same sentence would also be added to page 1, line 7 after the word employment to correct the title.

Discussion:

REP. WHALEN opposed the amendment. He said he believes if this language is included in the bill, it creates a public policy situation where 24 months discourages a person from actively seeking employment. As a practical matter, he can't imagine a person not finding a job within two years, but it is conceivable that a person might not be able to do so.

CHAIRMAN FAGG said he believes that adding the amendment encourages people to try to find work within the first two years, because any expenses expended during the first two years would be recouped by then; after that time, it wouldn't be. **CHAIRMAN FAGG** said he is concerned there might be people who half-heartedly look for work and expend some funds to do that. This bill would encourage them to get on the payroll within a couple of years. He believes two years is a significant amount of time to give somebody to try to find a job again. It is a compromise and gives more balance to the bill.

REP. WYATT said she believes that this amendment limits the time that is deducted against a person's wages. It is very difficult for a white collar, professional worker to seek a comparable position in two years. It's extremely difficult for an individual or a couple to find a job that equalizes what they're worth, and it's also difficult to make a living off half the salary they may have been used to. It could take more than two years to find a professional job again, comparable to their former pay scale.

CHAIRMAN FAGG said this amendment does not limit a person's ability to seek employment after the 24-month period. It limits their ability to be reimbursed for the expenses which they expend and encourages people to try to work harder during the first two

years to find a job.

REP. WHALEN responded by saying a person may look for a job within the first two years and may take something part time, and in that period time, the person may continue to look for work throughout the four-year period. **REP. WHALEN** believes the bill limits a person's ability to have those expenses taken into account. He said he agrees with **REP. WYATT** and doesn't believe there's any incentive to look for a job when someone has been wrongfully discharged, especially in a job where a person was earning a decent salary. The amount of damages were limited in 1987 quite drastically. In fact, it's been limited to such an extent that, in many cases, even though a person may have been wrongfully discharged, the person cannot, from an economic point of view, even bring a lawsuit because the limitation on the ability to recover is such that, by the time attorney's fees and costs are paid, it's just not economical to bring those kinds of cases to court. **REP. WHALEN** believes that was the intent of the 1987 law, and he thinks the very type of people who suffer the most by that limitation are the people being turned out in their fifties who have already developed a course in life, have gotten married, have raised children and put them through college. The large companies turn those people out because they can get rid of people who are starting to develop seniority and pension benefits. This is a real serious problem in this country.

Vote: Question was called on the amendment on page 1, line 21, and in the title of the bill. The amendment failed on a tie vote of 9-9. Those in favor of the amendment were **CHAIRMAN FAGG, REPS. BIRD, WINSLOW, TASH, SMITH, SAYLES, BERGMAN, VOGEL** and **CLARK**. Those voting against the amendment were **REPS. BROWN, WYATT, GRIMES, RICE, BROOKE, RUSSELL, WHALEN, TOOLE,** and **MCCULLOCH.**

Motion/Vote: **REP. BROWN MOVED HB 258 DO PASS AS AMENDED.** Motion carried unanimously 18-0.

EXECUTIVE ACTION ON HB 121

Motion: **CHAIRMAN FAGG MOVED HB 121 DO PASS.**

Motion/Vote: **REP. BROWN** moved an amendment to the effect that the provision of 85-15-305 does not apply to dams and reservoirs at a national superfund priority site as defined by the Federal CERCLA Act of 1980. This amendment ensures that the liability for the Berkeley Pit remains with its existing and previous owners. Motion carried unanimously 18-0.

Motion: **CHAIRMAN FAGG** moved the following amendments.

1. Page 4, line 13.
Following: "failure" on line 12
Strike: "or rupture"

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 2-3-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

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HOUSE STANDING COMMITTEE REPORT

February 4, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 258 (first reading copy -- white) do pass as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 6.
Following: "TO THE"
Insert: "REASONABLE"

2. Page 1, line 20.
Following: "any"
Insert: "reasonable"

-END-

Committee Vote:
Yes 4, No 3

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HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2-3-93 BILL NO. HB 295 NUMBER 18

MOTION: Motion to pass carried unanimously 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	18	0

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 15, 1993, at 10:05 a.m.

ROLL CALL

Members Present:
Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. Tom Towe (D)

Members Excused: Sen. Rye

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 258
	HB 468
Executive Action:	HB 409
	HB 573
	HB 496
	HJR 21

HEARING ON HB 258

Opening Statement by Sponsor:
Representative Toole, District 60, said HB 258 would provide for a more reasonable calculation of damages in wrongful discharge suits. Under the current law, allowed damages are four years of pay from the date of termination, which is the maximum a judge, jury, or arbitrator could award. The amount had to be deducted from earnings at a new job. If a person with a modest job was

terminated from a $15,000 a year job, and then got a job earning $12,000 a year, after six months of being off, half a years total wages amounting to $7,500 of the $15,000 would be awarded. For the remaining three and a half years, the difference between the $15,000 job and the $12,000 job would be awarded. Rep. Toole said those limits are serious problems if a person has to undergo paying a significant relocation cost. Many people who are terminated have to leave their communities to find a job elsewhere. HB 258 was amended in the House Judiciary Committee to say that the amount of relocation cost would be deducted only if the cost was reasonable. Rep. Toole also proposed an amendment. (Exhibit #1) Rep. Toole told the Committee that the amendment addresses a court decision, Hoffman Vs. Town Pump, in the wrongful discharge area. An employer who made an offer to arbitrate in a wrongful discharge suit was not entitled to attorneys fees after the employee rejected the offer. Rep. Toole said that was not the intent. The intent of the arbitration provision is if a person makes a valid offer and the other side rejects it, and then the person who rejects the offer fails to better it in the final outcome, that person would be obligated to pay attorneys fees. The Hoffman case was decided unfavorably to the employee, but the employer was not allowed to collect. Rep. Toole asked the Committee to pass HB 258 with or without the amendment.

Proponents' Testimony:
David Owen, Montana Chamber of Commerce, told the Committee that the Montana Chamber of Commerce supports HB 238. Mr. Owen said the Montana Chamber of Commerce opposed HB 238 in the House because the bill allowed someone to collect interim pay as well as back pay. The Montana Chamber of Commerce asked for some kind of definition and restriction on what can be construed as reasonable costs in terms of seeking employment. For instance, it would not be a reasonable cost to go to Hawaii four times looking for work if the person is a snow plower. Mr. Owen said HB 238 now proposes to do that. On that basis the Montana Chamber of Commerce support HB 238.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
Senator Towe asked Rep. Toole about the proposed amendments. Rep. Toole said the amendments were proposed by Rep. Mercer and Rep. Rice. The amendment is a rewrite of the existing statute. The amendment addresses Hoffman Vs. Town Pump by clarifying and restating the rule that loser pays when arbitration is offered and then rejected. The rule that the loser pays was not implemented in the Hoffman Vs. Town Pump decision.

Senator Towe asked Rep. Toole about the Hoffman case. Rep. Toole

said the employee rejected the employer's offer to arbitrate and the case was dismissed. The Supreme Court rejected the payment of attorneys fees to the employer, which was a favorable decision for the employee, but was not in line with the intent of the statute. The amendment is intended to address that problem and firm up the loser pays rule.

Senator Towe asked Rep. Toole about the loser pays rule. Rep. Toole said if either party rejects arbitration then attorney fees would be paid by the loser.

Senator Towe asked Rep. Toole if the loser pay rule would discourage people from offering arbitration. Rep. Toole said the loser pay rule that was originally to engage in the law was intended to decrease litigation. Rep. Toole said that by reinstating and reinforcing the rule it would continue to have that effect. The Hoffman case was a clear example of the courts' unwillingness to enforce the statute that was written.

Senator Blaylock asked Rep. Rice about the amendment. Rep. Rice said the reason the amendment was offered so the original intent was put back into the statute.

Chair Yellowtail proposed to leave the record open for 48 hours to receive written comment from parties regarding the proposed amendment.

Senator Bartlett asked Rep. Toole about the intent of the amendments. Rep. Toole said restating the provisions of the existing statute in a new section would give the courts a chance to take a second look it when a similar case to Hoffman Vs. Town Pump is heard.

Closing by Sponsor:
Senator Toole urged passage for HB 258.

HEARING ON HB 468

Opening Statement by Sponsor:
Representative Rice, District 43, told the Committee that Montana's Prison system is overcrowded. Prisons can keep being built, but the prisons would still be overcrowded. Correction systems nationwide are recognizing that prison space is limited and extremely expensive, and must be reserved for those offenders who truly need incarceration. Some alternatives to incarceration would be prerelease centers, house arrests, day reporting centers, or intensive supervision. Rep. Rice said the present sentencing statute makes it difficult to use those alternatives. HB 468 would encourage judges to sentence offenders to the Department of Corrections and allow the Department to analyze alternatives to incarceration. HB 468 would not be an absolute

ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-15-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye			X

FC8

Attach to each day's minutes

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 3-15-93
BILL NO. HB 258

Amendments to Senate Bill No. 19
Third Reading Copy

Requested by Rep. _____
For the Committee on the Judiciary

Prepared by John MacMaster
January 29, 1993

1. Title, lines 4 and 5.
Strike: "LIMITING THE EXEMPTIONS FROM"
Insert: "CLARIFYING THE ORIGINAL LEGISLATIVE INTENT OF"
Following: "ACT"
Insert: "WITH RESPECT TO ARBITRATION"

2. Title, line 6.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "39-2-912"
Insert: "AND 39-2-914"

3. Page 1, line 25.
Following: line 24
Insert: "**Section 2.** Section 39-2-914, MCA, is amended to read:

"**39-2-914. Arbitration.** (1) ~~Under~~ A party may make a written ~~agreement of the parties,~~ offer to enter into arbitration of a dispute that otherwise could be adjudicated under this part ~~may be resolved by final and binding arbitration as provided in this section~~.

(2) An offer to ~~arbitrate~~ enter into arbitration must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part applies.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to ~~arbitrate~~ enter into arbitration must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

~~(4) A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.~~

~~(5) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.~~ .

~~(6) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding,~~

~~subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act.~~"
{*Internal References to 39-2-914: None.*}

NEW SECTION. **Section 3. Effect of acceptance or rejection of offer to enter into arbitration.** (1) A party who makes a valid offer to enter into arbitration that is not accepted by the other party and who prevails in an action under this part is entitled to reasonable attorney fees incurred subsequent to the date of the offer.

(2) A discharged employee who makes a valid offer to enter into arbitration that is accepted by the employer and who prevails in the arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

(3) If a valid offer to enter into arbitration is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act.

NEW SECTION. **Section 4. {standard} Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 39, chapter 2, part 9, and the provisions of Title 39, chapter 2, part 9, apply to [section 3]."

Renumber: subsequent section

EXECUTIVE ACTION ON HB 272

Motion:

Senator Halligan moved HB 272 BE CONCURRED IN. He withdrew his motion.

Discussion:

Valencia Lane explained the amendments (HB027201.agp).

Motion/Vote:

Senator Halligan moved HB 272 BE AMENDED (HB027201.agp). The motion CARRIED UNANIMOUSLY with Senator Blaylock and Senator Harp not voting.

Motion\Vote:

Senator Halligan moved HB 272 BE CONCURRED IN AS AMENDED. The Motion CARRIED UNANIMOUSLY with Senator Blaylock and Senator Harp not voting.

EXECUTIVE ACTION ON HB 258

Discussion:

Valencia Lane explained Representative Howard Toole had suggested an amendment (HB025801.AVL).

Senator Yellowtail recognized Brent Cromley to explain the amendment.

Brent Cromley, practicing attorney, Billings, told the Committee he had represented a client in a wrongful termination suit. The law said that before litigation commenced, one side could make an offer to arbitrate. If the offer is successful, the client would be able to recover the attorney's fees. He said in the case he was involved in, his client made the offer to arbitrate, but the case went to litigation. The Montana Supreme Court originally decided in favor of Mr. Cromley's client to recover attorney's fees, but the Court said there was no written agreement to arbitrate. There was a petition for a rehearing which was denied. He said this decision was a disservice to all involved because it moved away from the decision to arbitrate rather than to sue. He said the amendment did not change the statute, but made clear that there was an incentive to go to arbitration.

Senator Towe asked Valencia Lane to explain what the amendment would do. Ms. Lane explained the language in the new Section 3 was the same as the first set of amendments. She said this did

not change the law, but instead would get the court's attention.

Senator Bartlett asked if the amendment passed what the practical effect would be. Valencia Lane answered the hope was that the courts would look at the new section and decide to overturn cases in which the client was denied compensation for attorney's fees.

Mr. Cromley told the Committee the amendments to HB 258 give for the Supreme Court reason to see that the statute was clarified.

Senator Bartlett asked if it would be good to adopt the amendment in order to signal attorneys what the Bill is attempting to make them understand. Mr. Cromley said that part of the legislative history of the Bill was an incentive to deal with problems outside of court, and thus the amendment may signal that.

Senator Towe asked Mr. Cromley if there should be something in the statement of intent to make the Court see the intent of the Committee. Mr. Cromley answered that this would be helpful if the intent was not already clear from the minutes of the Committee. Senator Towe asked if he thought it was clear. Mr. Cromley answered he thought the intent was clear.

Senator Halligan asked if there was normally a written and signed agreement to arbitrate. He noted all he saw in HB 258 was an offer to arbitrate, and that the court had turned on the fact there was no written agreement. Mr. Cromley said there was no offer in terms of dollars. He said if a person was fired, that person could make an offer to arbitrate. A letter would be sent to the employer with the offer. If the employer chooses not to arbitrate, and the employee sues and is successful, then the employee's attorney's fees can be recovered. The employer could also make an offer to arbitrate, and would have the same benefits of making that offer.

Senator Halligan asked if the person who made the offer to arbitrate would receive a letter back from the person who made the offer. Mr. Cromley answered that the statute provided for a system of going through the arbitration process.

Motion/Vote:

Senator Towe moved the amendment (HB025801.AVL) be adopted. The Motion CARRIED UNANIMOUSLY with Senator Blaylock and Senator Harp not voting.

Motion\Vote:

Senator Towe moved HB 258 BE CONCURRED IN AS AMENDED. The Motion CARRIED UNANIMOUSLY with Senator Blaylock and Senator Harp not voting. Senator Halligan was assigned to carry the Bill.

ROLL CALL

SENATE COMMITTEE Judiciary DATE 3/17/93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration House Bill No. 258 (first reading copy -- blue), respectfully report that House Bill No. 258 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 7.
Following: "EMPLOYMENT;"
Insert: "CLARIFYING THE ORIGINAL LEGISLATIVE INTENT OF THE WRONGFUL DISCHARGE FROM EMPLOYMENT ACT WITH RESPECT TO ARBITRATION;"

2. Title, line 8.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "39-2-905"
Insert: "AND 39-2-914"

3. Page 2, line 8.
Following: line 7
Insert: "Section 2. Section 39-2-914, MCA, is amended to read:
"39-2-914. Arbitration. (1) ~~Under~~ A party may make a written ~~agreement of the parties,~~ offer to arbitrate a dispute that otherwise could be adjudicated under this part ~~may be resolved by final and binding arbitration as provided in this section~~.

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part applies.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

~~(4) A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action~~

~~under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.~~

~~(5)~~(4) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

~~(6)~~(5) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act."

NEW SECTION. Section 3. Effect of rejection of offer to arbitrate. A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.

NEW SECTION. Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 39, chapter 2, part 9, and the provisions of Title 39, chapter 2, part 9, apply to [section 3]."

-END-

HOUSE BILL NO. 258

INTRODUCED BY TOOLE, WHALEN, BIRD

A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM THE INTERIM EARNINGS DEDUCTION IN A SUCCESSFUL WRONGFUL DISCHARGE SUIT AN AMOUNT EQUAL TO THE REASONABLE COSTS OF OBTAINING OR RELOCATING TO NEW EMPLOYMENT; CLARIFYING THE ORIGINAL LEGISLATIVE INTENT OF THE WRONGFUL DISCHARGE FROM EMPLOYMENT ACT WITH RESPECT TO ARBITRATION; AND AMENDING ~~SECTION~~ SECTIONS 39-2-905 AND 39-2-914, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-2-905, MCA, is amended to read:

"**39-2-905. Remedies.** (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest thereon. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, there must be deducted from the interim earnings any REASONABLE amounts expended by the employee in searching for, obtaining, or relocating to new employment.

(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of 39-2-904(1).

(3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2)."

SECTION 2. SECTION 39-2-914, MCA, IS AMENDED TO READ:

"**39-2-914. Arbitration.** (1) ~~Under~~ A party may make a written ~~agreement of the parties,~~ offer to arbitrate a dispute that otherwise could be adjudicated under this part ~~may be resolved by final and binding arbitration as provided in this section~~.

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part applies.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

~~(4)--A-party-who-makes-a-valid-offer-to--arbitrate--that is--not--accepted--by-the-other-party-and-who-prevails-in-an action-under-this-part-is-entitled-as-an-element-of-costs-to reasonable-attorney-fees-incurred-subsequent-to-the-date--of the-offer.~~

~~(5)~~(4) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

~~(6)~~(5) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act."

NEW SECTION. **SECTION 3.** EFFECT OF REJECTION OF OFFER TO ARBITRATE. A PARTY WHO MAKES A VALID OFFER TO ARBITRATE THAT IS NOT ACCEPTED BY THE OTHER PARTY AND WHO PREVAILS IN AN ACTION UNDER THIS PART IS ENTITLED AS AN ELEMENT OF COSTS TO REASONABLE ATTORNEY FEES INCURRED SUBSEQUENT TO THE DATE

OF THE OFFER.

NEW SECTION. **SECTION 4.** CODIFICATION INSTRUCTION. [SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 2, PART 9, AND THE PROVISIONS OF TITLE 39, CHAPTER 2, PART 9, APPLY TO [SECTION 3].

-End-